

FILED
Clerk
District Court

JUL 21 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

LI YING HUA, LI ZHENG ZHE,
and XU JING JI,

Plaintiffs

v.

JUNG JIN CORPORATION, a
Commonwealth of the Northern
Mariana Islands Corporation; ASIA
ENTERPRISES, a Commonwealth of
the Northern Mariana Islands
Corporation; PARK HWA SUN;
KSK Corporation, a Commonwealth
of the Northern Mariana Islands
Corporation; KIM HANG KWON;
and, KIM KI SUNG,

Defendants

Civil Action No. 05-0019

ORDER DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

1 THIS MATTER came before the court on July 17, 2008, for hearing of
2 plaintiffs' motion for summary judgment. Plaintiffs appeared by and through their
3 attorney, Mark B. Hanson; defendants KSK Corporation and Kim Ki Suk appeared
4 by and through their attorney, G. Anthony Long.
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6 THE COURT, having considered the written and oral arguments of counsel,
7 denies plaintiffs' motion for summary judgment as there remain genuine issues of
8 material fact for trial.
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10 Rule 56 of the Federal Rules of Civil Procedure states, in part, that judgment
11 "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories,
12 and admissions on file, together with the affidavits, if any, show that there is no
13 genuine issue as to any material fact and that the moving party is entitled to judgment
14 as a matter of law." To defeat a motion for summary judgment, all that is required
15 from the non-moving party is that sufficient evidence supporting the claimed factual
16 dispute be shown to require a jury or judge to resolve the parties' differing versions of
17 truth at trial. *First National Bank v. Cities Service Co.*, 391 U.S. 253, 88 S.Ct. 1575, 1592
18 (1968).
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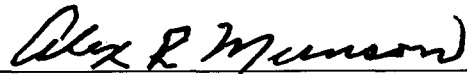
22 The court must view the evidence in the light most favorable to the non-
23 moving party; if direct evidence from both parties conflicts, summary judgment must
24 be denied. *Matsushita Electrical Industrial Co., Ltd. v. Zenith Radio Corp.*, 106 S.Ct. 1348,
25 1356 (1986).
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1 Most important here is that the court may not weigh conflicting versions of
2 fact on a motion for summary judgment. "Rule 56 calls for the judge to determine
3 whether there exists a genuine issue for trial, not to weigh the evidence himself and
4 determine the truth of the matter." *Baxter v. MCA, Inc.*, 812 F.2d 421, 424 (9th Cir.),
5 *cert. denied William v. Baxter*, 484 U.S. 954, 108 S.Ct. 346, 98 L.Ed.2d 372 (1987), *citing*
6 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511 (1986). "[A]
7 court can only enter a summary judgment if *everything* in the record---pleadings,
8 depositions, interrogatories, affidavits, *etc.*---demonstrates that no genuine issue of
9 material fact exists." *Keiser v. Coliseum Properties, Inc.*, 614 F.2d 406, 410 (5th Cir. 1980)
10 (emphasis in original). *See also Bieghler v. Kleppe*, 633 F.2d 531, 534 (9th Cir. 1980)
11 (holding that the "determination [as to the persuasiveness of plaintiffs' evidence] is
12 not to be made on a motion for summary judgment, even if the trial judge is
13 convinced plaintiffs will eventually lose.").

14 Here, the court concludes that plaintiffs' motion, as comprehensive and well-
15 documented as it is, founders on the shoal of "weighing the evidence." After careful
16 consideration, the court has concluded that it cannot grant the motion without the
17 necessity of making credibility determinations and weighing certain of the evidence
18 before it and drawing inferences therefrom, actions which are prohibited at this
19 juncture in the proceedings. In particular, the court finds that there are genuine
20 issues of material fact involving whether these defendants acquired a substantial
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1 portion of the assets of the judgment debtors so as to meet one requirement for
2 imposition of successor liability under the Fair Labor Standards Act, whether
3 plaintiffs' claims are sufficiently associated with the assets acquired such that in equity
4 and good conscience successor liability can be imposed on Kim Ki Suk and KSK
5 Corporation, and whether the \$100,000 promissory note was legitimate
6 documentation of a debt or simply an attempt to thwart plaintiffs' claims. In order to
7 resolve these questions of fact, the court will need to hear and assess the witnesses
8 before it. Accordingly, plaintiffs' motion for summary judgment is denied.
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12 DATED this 21st day of July, 2008.

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16 ALEX R. MUNSON

17 Judge
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